

IN SENATE OF THE UNITED STATES.

JANUARY 9, 1840.

Ordered to be printed.

Mr. WILLIAMS, from the Committee on Naval Affairs, submitted the following

REPORT :

The Committee on Naval Affairs, to which was referred the Memorial of Andrew Armstrong, report :

That said Armstrong was appointed navy agent, at Lima, in Peru, and commissioned as such in May, 1828. That he entered upon the discharge of the duties of that office in June, 1829.

On the 5th of April, 1830, a letter from the Navy Department to said Armstrong, was sent to him at Lima, notifying him that his appointment as navy agent at Lima, was revoked, and calling for his accounts and vouchers for settlement, which letter was not received by Mr. Armstrong until October 20, 1830. The usual time for letters to be passed from Washington to Lima, was considered by the department to be about ninety days, and hence it was assumed that the letter of 5th April, to Mr. Armstrong, should have been received by him as early as the 5th of July, although in fact it was not so received until October 20, 1830. On the 13th of July, 1830, Mr. Armstrong, as navy agent, drew a bill for \$2,000, and on the 16th of August, 1830, drew another bill, for \$4,000, upon the Navy Department, both of which were protested for non-acceptance, for the alleged reason that Mr. Armstrong had been superseded as navy agent. On the 12th of September, 1831, a letter from the Navy Department was written to Mr. Armstrong, at Lima, (in reply to his letter of June 4, 1831,) stating that it was supposed by the department that the notice of the revocation of his appointment would have reached him in ninety days, and consequently it was not deemed proper to honor his bills dated after the expiration of that time ; and adding, that when, however, it was ascertained that the notification was not received by him within the prescribed period, the department had honored all his drafts subsequently presented, and dated anterior to the receipt of the letter revoking his appointment ; and that all his bills thus bearing date, though formerly refused, if presented and found regular, would be paid ; and this letter was delivered to Mr. Armstrong on the 16th of February, 1832. Mr. Armstrong alleges that, in consequence of the protest and return of his bills, it became necessary for him to remain at Lima until he received notice that the department would pay them, and that he was consequently subjected to great losses and expenses. In July, 1832, Mr. Armstrong presented his accounts to the department for settlement,

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making a balance of \$4,681 74 due to him; but items amounting to \$17,631 37 were disallowed by the department, thereby making a balance of \$12,875 14 due from him to the Government, for which sum a warrant of distress was issued against him. Mr. Armstrong, to relieve himself from paying that sum, applied for and obtained an injunction from the district court for the eastern district of Pennsylvania, and upon a hearing of the parties thereon in July, 1833, the injunction was made perpetual, so far as related to \$5,620 46, part of the sum mentioned in said warrant of distress, and for the residue thereof was dissolved. Mr. Armstrong, not satisfied that justice had been done to him, either by the department or by the court, petitioned Congress for relief, and an act for that purpose was passed on the 30th of June, 1834, under which he obtained an allowance of \$13,391 14, inclusive of the sums which had been recognised as just by the district court, but still leaving some items of his claim unsatisfied; and for these items and some new charges he now prays Congress that another act for his relief may be passed, and his petition, to some extent, has been favorably reported upon at former sessions. His claim, as now presented, is as follows:

Statement of the claims of Andrew Armstrong against the Government of the United States of North America.

1st. For amount of clerk hire, office rent, and stationery—rejected in last settlement	\$2,768 75
2d. For expenses while waiting the fate of bills, and while the same were under protest—also rejected	1,609 87
3d. Commissions on \$148,317 36, being amount of bills drawn, at $2\frac{1}{2}$ per cent.	3,707 84
4th. For expenses and damages incurred from warrant of distress, as follows; viz:	
Court charges	\$237 30
Attorney's fees	220 00
	457 30
Amount of judgment and interest	7,376 14
Interest on the sum of	\$7,833 44
from the 26th October, 1833, when the account was adjusted by a bill on Lima, to the 10th October, 1834, when the same was refunded—	
say 11 months and 15 days	450 37
Total amount	\$8,994 13

ANDREW ARMSTRONG.

NEW ORLEANS, December 10, 1839.

The first two items of this claim are expressly recognised in the act of June 30, 1834, which, among other things, provides "for the allowance of \$3,595 15, in lieu of all other charges and expenses of clerk hire, stationery, and office rent, and his expenses and compensation during the time

he was in Lima, in consequence of the protest of his bills on the Secretary of the Navy," &c.; and the Committee cannot see any good reason for opening the account again, or for allowing the items now claimed.

The third item of claim is for commissions on the amount of his bills drawn. 'This is a new charge; and considering that Mr. Armstrong has already been allowed and paid more than \$8,000 for commissions on the business performed by him within a period of eighteen months, in addition to his salary of \$2,500 per annum, the Committee do not feel any disposition to allow it. The fourth, and last item, is a charge for expenses and damages incurred by Mr. Armstrong under the warrant of distress issued against him for an apparent balance against him on the books of the department, and for interest upon his bill drawn in favor of the department in payment of that balance; which balance, under the liberal provisions of the act for his relief, was more than absorbed by allowances made to him. The principle involved in deciding upon this item is important. It seems to be hard, and perhaps unjust, for the Government to compel payment of money claimed to be due to it, with the costs and sacrifices incident to a warrant of distress for the collection of it, when at the same time the party has claims to an equal amount, which are subsequently recognised and allowed by Congress to be just. It is equally hard that individuals shall be prosecuted for supposed offences or delinquencies of which they are not guilty, and upon trial are acquitted, without being allowed to recover costs against the Government. But the rule being established, that the Government is not liable to costs in such cases, the Committee do not feel at liberty to depart from it, nor do they think that this is a case calling for any special favor from the Government. That part of this item which claims interest for Mr. Armstrong's draft upon his correspondent in Lima, given to the department to settle the warrant of distress, is without much merit; inasmuch as it was not paid until long after it was drawn, and the payment of it not known here until the fall of 1834, when the money was repaid to him; and as the draft was given in satisfaction of a debt claimed to be due from him. If interest should be allowed upon any thing, it would seem that it should be upon the charges in Mr. Armstrong's account which had been disallowed by the department, and were subsequently allowed by Congress; but as the act of June 30, 1834, did not provide for allowing interest, the Committee are not disposed to recommend any farther legislation upon the subject, and report the following resolution :

On the petition of Andrew Armstrong,

Resolved, That the prayer of the petitioner be not granted.

